

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH	)	
CONNECTIONS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-cv-00878 JB/JHR
	)	
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE**

Defendants respectfully file this Notice to inform the Court of additional developments that may bear on the Court's consideration of Defendants' Rule 59(e) motion, ECF No. 57, which have occurred since the Defendants' most recent filing of July 19, 2018, ECF No. 78.

HHS last night issued a new Final Rule concerning the risk adjustment methodology for the 2017 benefit year, which will be effective upon its publication in the Federal Register. *See* Ex. A, Adoption of the Methodology for the HHS-operated Permanent Risk Adjustment Program under the Patient Protection and Affordable Care Act for the 2017 Benefit Year (CMS-9920-F), *available at* <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-9920-F-7-24-18-final.pdf>. The new rule adopts the risk adjustment methodology previously promulgated by the agency for the 2017 benefit year. It also responds to the Court's prior decision by providing additional explanation of the agency's use of statewide average premium in the risk adjustment payment transfer formula, as well as the risk adjustment program's budget neutral design. *See* Ex. A at 6–12.

Pursuant to this new rule and section 1343 of the Patient Protection and Affordable Care Act, Defendants will now proceed with carrying out the risk adjustment program for the 2017 benefit year, including collecting charges and making payments for the 2017 benefit year. As stated in the rule, Defendants anticipate issuing invoices to plans assessed a charge for the 2017 benefit year (after netting pursuant to 45 C.F.R. § 156.1215(b)) on or about September 11–13, 2018. Ex. A at 13. Defendants anticipate beginning to issue payments to plans owed a payment under the methodology on or about October 22, 2018. *Id.*

Defendants continue to urge the Court to grant their Rule 59(e) motion in full. The new rule attached hereto covers only the 2017 benefit year. And even for that year, issuance of this new rule and the explanation provided therein further demonstrate that the earlier 2017 benefit year rule at issue in this litigation was not arbitrary and capricious under the Administrative Procedure Act and, in any event, remand without vacatur is the appropriate remedy in light of the error identified by the Court.

Defendants further notify the Court that they intend to issue a Notice of Proposed Rulemaking to propose and solicit comment on the risk adjustment methodology that will apply to the 2018 benefit year. *See* Ex. B. Defendants will provide the Court with additional information about this draft rule when appropriate.

Dated: July 25, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

DIANE KELLEHER  
Assistant Branch Director

/s/ James Powers  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2018, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

/s/ James Powers  
James R. Powers